I saw today. In spite of the fact that they will do another article now, the Political Money Line folks have admitted to making mistakes.

In any event, instead of being the No. 1 active Member of the Senate relative to utilization of corporate aircraft, according to their calculations, I would be No. 28. Under their calculations, instead of $101,000, it should have been $18,000. That is how egregious this situation has become.

Now what happens in the case of this sort of thing relative to what we have on the floor today? Well, here is the way I look at this, and I have talked with people all across my State about this. Are folks concerned about Members of Congress and ethics? You bet. Is there anybody in this Senate who campaigned on the fact that, You send me to Washington, you send me to the Senate, and, boy, I will get lobbyist reform? I think the answer to that question is absolutely not. That is not a typical campaign platform. Does everybody in this Senate go home and talk about what is going on in Iraq? Have any of us campaigned on what is happening in Iraq? You bet. People care about that. Are people upset about what is going on relative to the ports issue and the potential for Dubai to purchase the managerial contract for the six ports in the United States? You bet. People care about that.

People expect us, as Members of the Senate, to act in an ethical way. And those of us who have this unique problem, whether it is relative to a spouse or a child, in my opinion, must have acted in an ethical way because I don't know of any situation where what has happened as an ethical complaint has been brought forward. People do expect us to be ethical, and those of us who have this situation work very hard to make sure we are.

So I would hope since we are not going to be voting on this matter today, we may not be voting on it next week—I don't know when it will come up again—but I am very hopeful that the Members of this body will think through this and that we will look at legislation that encompasses issues such as Senator MCCAIN has talked about on earmarks. I think if you are going to reform Congress, which is what I think is most necessary, then reforming the earmark process is necessary. Senator MCCAIN talks about this every year during the appropriations process, and this year I think he is getting everybody's attention. That should be reformed. There are other issues in this congressional reform we ought to pay attention to. But I will have to tell you that if we are going to have irresponsible acts by folks who are taking information we disclose under the congressional reform action, whatever ultimate legislation may come out of this body, and they are going to utilize it in a wrong way, then it may be time we looked at taking some action against folks who do that as well as having the potential to take action against Members of the Senate.

Mr. President, I yield back, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. THUNE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ISAKSON. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

Mr. ISAKSON. I ask unanimous consent to address the Senate as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING ROBERT MOULTRIE

Mr. ISAKSON. Mr. President, in a few weeks in my home county of Cobb County, GA, a pretty normal occurrence is going to take place for someone who is anything other than a normal person. It is going to be the 65th birthday of a man named Robert Moultrie. Now, 65th birthdays are becoming pretty common. I am pretty happy they are, because I am about to have one in a couple of years. But Robert is an extraordinary individual. I hope he is not watching C–SPAN right now because they are going to give a big surprise party for him, and if he is watching I am going to be in big trouble, but I doubt he is because he is a busy entrepreneur of unbelievable accomplishment.

He started a company in 1986 known as The Facility Group, and it was six individuals. Their revenues were about $10 million. Last year, Robert Moultrie's company, The Facility Group, employed 300 people and their revenues were $250 million.

He is an extraordinary individual, a graduate of Georgia Tech. He is a good engineer, as someone running a design/build firm should obviously be, but also a great benefactor to that institution, as well as Erskine College, where he led the $30 million capital campaign a few years ago.

What makes Robert extraordinary is not just those accomplishments in business, which are great, but the fact that he and his wife are a little bit like the title of Bob and ELIZABETH DOLE's famous book, ''Unlimited Partners,'' because they are equal partners in their journey both in business as well as community service. When Robert chaired the Cobb County Chamber of Commerce, the second largest chamber in the State in 2002, everybody thought Cheryl was kind of cochairman because she was as involved as he was. When they chaired the Heart Ball for the community, they set an all-time record in our State, raising $600,000 in 1 night to benefit those who were fighting heart disease.

Girls Club, Boys Club, United Way, or simply a helping hand, Robert and Cheryl Moultrie have always been there. As I said, 65th birthdays are very common but Robert Moultries are not. Our community is very fortunate to have had him there, and I am very fortunate to have the opportunity today in the Senate to commend him on his achievements for our community and commend him on this milestone in his life.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DEMINT). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

PETROLEUM INDUSTRY ANTITRUST ACT OF 2006

Mr. SPECTER. Mr. President, the Judiciary Committee, which I chair, has from time to time examined the implications of mergers, acquisitions, and joint ventures among companies affecting various fields in the American economy.

Just a few days ago, a major proposal reached public view in the telephone industry. There have been major acquisitions and mergers in many lines of commerce, and there is special concern at the present time about the impact of acquisitions and mergers of major oil companies on the price of gasoline, which has soared for American consumers. I have been concerned about the actions of OPEC over the years in limiting production and undertaking joint actions which really violate the spirit of competition and increase the cost of oil.

I ask unanimous consent that at the conclusion of my comments, letters that I sent to the President as far back as the Clinton administration, and that I sent to President Bush, outlining the judge-made laws which have given OPEC immunity under our antitrust laws be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit No. 1.)

EXHIBIT 1

U.S. SENATE,
Washington, DC, April 11, 2000.

President WILLIAM JEFFERSON CLINTON
The White House,
Washington, DC.

DEAR MR. PRESIDENT: In light of the very serious problems caused by the recent increase in oil prices, we know you will share our view that we should explore every possible alternative to stop OPEC and other oil-producing states from entering into agreements to restrict oil production in order to drive up the price of oil.

This conduct is nothing more than an old-fashioned conspiracy in restraint of trade which has long been condemned under U.S. law, and which should be condemned under international law.

After some considerable research, we suggest that serious consideration be given to two potential lawsuits against OPEC and the nations conspiring with it:

(1) A suit in Federal district court under U.S. antitrust law.

(2) A suit in the International Court of Justice at the Hague based, perhaps, upon an advisory opinion under ''the general principles of law recognized by civilized nations,'' which includes prohibiting oil cartels from conspiring to limit production and raise prices.

(1) A suit in Federal district court under U.S. antitrust law.

A case can be made that your Administration can sue OPEC in Federal district court under U.S. antitrust law. OPEC is clearly engaging in a ''conspiracy in restraint of trade'' in violation of the Sherman Act (15 U.S.C. Sec. 1). The Administration has the power to sue under 15 U.S.C. Sec. 4 for injunctive relief to prevent such collusion.

In addition, the Administration should consider suing OPEC for treble damages under the Clayton Act (15 U.S.C. Sec. 15a), since OPEC's behavior has caused an ''injury'' to U.S. ''property.'' After all, the U.S. government is a major consumer of petroleum products and must now pay higher prices for these products. In *Reiter* v. *Sonotone Corp*, (42 U.S. 330 (1979), the Supreme Court held that the consumers who were direct purchasers of certain hearing aides who alleged that collusion among manufacturers had led to an increase in prices had standing to sue those manufacturers under the Clayton Act since ''a consumer deprived of money by reason of allegedly anticompetitive conduct is injured in 'property' within the meaning of [the Clayton Act].'' Indirect purchasers would appear to be precluded from suit, even in a class action, under *Illinois Brick* v. *Illinois*, 431 U.S. 720 (1977), but this would not bar the United States Government, as a direct purchaser, from having the requisite standing.

One potential obstacle to such a suit is whether the Foreign Sovereign Immunities Act (''FSIA'') provides OPEC, a group of sovereign foreign nations, with immunity from suit in U.S. courts. To date, there has been a ruling on this issue in only one case. In *International Association of Machinists* v. *OPEC*, 477 F. Supp. 553 (1979), the District Court for the Central District of California held that the nations which comprise OPEC were immune from suit in the United States under the FSIA. We believe that this opinion was wrongly decided and that other district courts, including the D.C. District, can and should revisit the issue.

This decision in Int. Assoc. of Machinists turned on the technical issue of whether or not the nations which comprise OPEC are engaging in ''commercial activity'' or ''governmental activity'' when they cooperate to sell their oil. If they are engaging in ''governmental activity,'' then the FSIA shields them from suit in U.S. courts. If, however, these nations are engaging in ''commercial activity,'' then they are subject to suit in the U.S. The California District Court held that OPEC activity is ''governmental activity.'' We disagree. It is certainly a governmental activity for a nation to regulate the extraction of petroleum from its territory by ensuring compliance with zoning, environmental and other regulatory regimes. It is clearly a commercial activity, however, for these nations to sit together and collude to limit their oil production for the sole purpose of increasing prices.

The 9th Circuit affirmed the District Court's ruling in Int. Assoc. of Machinists in 1981 (649 F.2d 1354), but on the basis of an entirely different legal principle. The 9th Circuit held that the Court could not hear this case because of the ''act of state'' doctrine, which holds that a U.S. court will not adjudicate a politically sensitive dispute which would require the court to judge the legality of the sovereign act of a foreign state.

The 9th Circuit itself acknowledged in its Int. Assoc. of Machinists opinion that ''The [act of state] doctrine does not suggest a rigid rule of application,'' but rather application of the rule will depend on the circumstances of each case. The Court also noted that, ''A further consideration is the availability of internationally-accepted legal principles which would render the issues appropriate for judicial disposition.'' The Court then quotes from the Supreme Court's opinion in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964):

It should be apparent that the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice.

Since the 9th Circuit issued its opinion in 1981, there have been major developments in international law that impact directly on the subject matter at issue. As we discuss in greater detail below, the 1990s have witnessed a significant increase in efforts to seek compliance with basic international norms of behavior through international courts and tribunals. In addition, there is strong evidence of an emerging consensus in international law that price fixing by cartels violates such international norms. Accordingly, a court choosing to apply the act of state doctrine to a dispute with OPEC today may very well reach a different conclusion than the 9th Circuit reached almost twenty years ago.

You should also examine whether the anticompetitive conduct of the international oil cartel is being effectuated by private companies who are subject to the enforcement of U.S. antitrust laws (for example, former state oil companies that have now been privatized) rather than sovereign foreign states. If such private oil companies are determined to in fact be participating in the anticompetitive conduct of the oil cartel, then we would urge that these companies be named as defendants in an antitrust lawsuit in addition to the OPEC members.

(2) A suit in the International Court of Justice at the Hague based upon ''the general principles of law recognized by civilized nations,'' which includes prohibiting oil cartels from conspiring to limit production and raise prices.

In addition to such domestic antitrust actions, we believe you should give serious consideration to bringing a case against OPEC before the International Court of Justice (the ''ICJ'') at the Hague. You should consider both a direct suit against the conspiring nations as well as a request for an advisory opinion from the Court through the auspices of the U.N. Security Council. The actions of OPEC in restraint of trade violate ''the general principles of law recognized by civilized nations.'' Under Article 38 of the Statute of the ICJ, the Court is required to apply these ''general principles'' when deciding cases before it.

This would clearly be a cutting-edge lawsuit, making new law at the international level. But there have been exciting developments in recent years which suggest that the ICJ would be willing to move in this direction. In a number of contexts, we have seen a greater respect for and adherence to fundamental international principles and norms by the world community. For example, we have seen the establishment of the International Criminal Court in 1998, the International Criminal Tribunal for Rwanda in 1994, and the International Criminal Tribunal for the former Yugoslavia in 1993. Each of these bodies has been active, handing down numerous indictments and convictions against individuals who have violated fundamental principles of human rights. For example, as of December 1, 1999, the Yugoslavia tribunal alone had handed down 91 public indictments.

Today, adherence to international principles has spread from the tribunals in the Hague to individual nations around the world. Recently, the exiled former dictator of Chad, Hissene Habre, was indicted in Senegal on charges of torture and barbarity stemming from his reign, where he allegedly killed and tortured thousands. This case is similar to the case brought against former Chilean dictator Augusto Pinochet by Spain on the basis of his alleged atrocities in Chile. At the request of the Spanish government, Pinochet was detained in London for months until an English court determined that he was too ill to stand trial.

The emerging scope of international law was demonstrated in an advisory opinion sought by the UN General Assembly in 1996 to declare illegal the use or threat to use nuclear weapons. Such an issue would ordinarily be thought beyond the scope of a judicial determination given the doctrines of national sovereignty and the importance of nuclear weapons to the defense of many nations. The ICJ ultimately ruled eight to seven, however, that the use or threat to use nuclear weapons ''would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.'' The fact that this issue was subject to a decision by the ICJ, shows the rapidly expanding horizons of international law.

While these emerging norms of international behavior have tended to focus more on human rights than on economic principles, there is one economic issue on which an international consensus has emerged in recent years—the illegitimacy of price fixing by cartels. For example, on April 27, 1998, the Organization for Economic Cooperation and Development issued an official ''Recommendation'' that all twenty-nine member nations ''ensure that their competition laws effectively halt and deter hard core cartels.'' The recommendation defines ''hard core cartels'' as those which, among other things, fix prices or establish output restriction quotas. The Recommendation further instructs member countries ''to cooperate with each other in enforcing their laws against such cartels.''

On October 9, 1998, eleven Western Hemisphere countries held the first ''Antitrust Summit of the Americas'' in Panama City, Panama. At the close of the summit, all 11 participants issued a joint communique in which they express their intention ''to affirm their commitment to effective enforcement of sound competition laws, particularly in combating illegal price-fixing, bid-rigging, and market allocation.'' The communique further expresses the intention of these countries to ''cooperate with one another . . . to maximize the efficacy and efficiency of the enforcement of each country's competition laws.'' One of the countries participating in this communique, Venezuela, is a member of OPEC.

The behavior of OPEC and other oil-producing nations in restraint of trade violates U.S. antitrust law and basic international norms, and it is injuring the United States and its citizens in a very real way. Consideration of such legal action could provide an inducement to OPEC and other oil-producing countries to raise production to head off such litigation.

We hope that you will seriously consider judicial action to put an end to such behavior.

ARLEN SPECTER.
HERB KOHL.
CHARLES SCHUMER.
MIKE DEWINE.
STROM THURMOND.
JOE BIDEN.

U.S. SENATE,
Washington, DC, June 15, 2000.

Hon. *William Jefferson Clinton,*
President of the United States, The White House, Washington, DC.

DEAR PRESIDENT CLINTON: We are writing to urge your Administration to take immediate and reasonable action in response to the Organization of Petroleum Exporting Countries' (OPEC) continued stranglehold on the global oil market. As you know, OPEC's agreement last March to automatically increase oil supply if global prices topped $28 per barrel for more than 20 days has been violated—the price of crude oil has closed over $28 since May 8, and is currently trading over $33—meaning sky-high oil and gasoline prices will increasingly, and indefinitely, take a toll on our economy. We strongly urge you to immediately counteract OPEC's dangerous intransigence through the use of oil from our nation's Strategic Petroleum Reserve (SPR) in order to increase supply, moderate prices, and significantly reduce our nation's dependence on OPEC decisions for our economic well-being.

OPEC's continued manipulation of the global oil market has translated into record high, and rising, gasoline prices in the United States, and the prospect of severe shortages in home heating oil next winter. Worst of all with global and American oil inventories approaching levels not seen since the mid-1970s, OPEC's continued price gouging will prevent refiners and distributors of petroleum products from stocking sufficient supply, meaning OPEC will continue to maintain its inordinate power over the global and American economies indefinitely.

Since last September, many of us have been calling on you and Secretary Richardson to use America's well-stocked SPR as leverage to counter OPEC's risky profiteering. With global supply, demand, and inventories remaining out of sync with each other, and OPEC ministers unwilling to play by the rules which they themselves created, the United States has every right to act decisively in the interest of its economic security. The immediate commencement of a ''swaps'' policy using SPR oil would moderate the global oil market, and generally buffer against foreign supply manipulations. And under current market conditions, a swaps policy provides the best way to increase the SPR from its current level of 570 million barrels, at no cost to the taxpayer.

OPEC has been emboldened by its highly successful quota policy over the past two years which has caused oil prices to effectively triple. OPEC ministers seem to now believe the United States and the world will accept, and call economically sustain, oil prices at $30 per barrel and above. Mr. President, it is simply unacceptable for us to allow our economy, and the world's economy, to be placed in jeopardy by a foreign oil cartel. With razor thin oil inventories and soaring gas prices coupled with new reports of a looming shortage of natural gas, we may be at the beginning of a serious and prolonged energy crisis that could send a chill through every economic sector of our country. The time to act is now.

Sincerely,

Charles E. Schumer; Carl Levin; Joseph I. Lieberman; Jack Reed; Patrick J. Leahy; Robert G. Torricelli; Susan M. Collins; James M. Jeffords; William V. Roth Jr.; Olympia J. Snowe; Christopher Dodd; Arlen Specter.

U.S. SENATE,
Washington, DC, April 25, 2001.

President GEORGE WALKER BUSH,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: In light of the energy crisis and the high prices of OPEC oil, we know you will share our view that we must explore every possible alternative to stop OPEC and other oil-producing states from entering into agreements to restrict oil production in order to drive up the price of oil.

This conduct is nothing more than an old-fashioned conspiracy in restraint of trade which has long been condemned under U.S. law, and which should be condemned under international law.

After some research, we suggest that serious consideration be given to two potential lawsuits against OPEC and the nations conspiring with it:

(1) A suit in Federal district court under U.S. antitrust law.

(2) A suit in the International Court of Justice at the Hague based upon ''the general principles of law recognized by civilized nations.''

(1) A suit in Federal district court under U.S. antitrust law.

A strong case can be made that your Administration can sue OPEC in Federal district court under U.S. antitrust law. OPEC is clearly engaging in a ''conspiracy in restraint of trade'' in violation of the Sherman Act (15 U.S.C. Sec. 1). The Administration has the power to sue under 15 U.S.C. Sec. 4 for injunctive relief to prevent such collusion.

In addition, the Administration has the power to sue OPEC for treble damages under the Clayton Act (15 U.S.C. Sec. 15a), since OPEC's behavior has caused an ''injury'' to U.S. ''property.'' After all, the U.S. government is a consumer of petroleum products and must now pay higher prices for these products. In *Reiter* v. *Sonotone Corp*, 442 U.S. 330 (1979), the Supreme Court held that the consumers of certain hearing aides who alleged that collusion among manufacturers had led to an increase in prices had standing to sue those manufacturers under the Clayton Act since ''a consumer deprived of money by reason of allegedly anticompetitive conduct is injured in 'property' within the meaning of [the Clayton Act].''

One issue that would be raised by such a suit is whether the Foreign Sovereign Immunities Act (''FSIA'') provides OPEC, a group of sovereign foreign nations, with immunity from suit in U.S. courts. To date, only one Federal court, the District Court for the Central District of California, has reviewed this issue. In *International Association of Machinists* v. *OPEC*, 477 F. Supp. 553 (1979), the Court held that the nations which comprise OPEC were immune from suit in the United States under the FSIA. We believe that this opinion was wrongly decided and that other district courts, including the D.C. District, can and should revisit the issue.

This decision in *Int. Assoc. of Machinists* turned on the technical issue of whether or not the nations which comprise OPEC are engaging in ''commercial activity'' or ''governmental activity'' when they cooperate to sell their oil. If they are engaging in ''governmental activity,'' then the FSIA shields them from suit in U.S. courts. If, however, these nations are engaging in ''commercial activity,'' then they are subject to suit in the U.S. The California District Court held that OPEC activity is ''governmental activity.'' We disagree. It is certainly a governmental activity for a nation to regulate the extraction of petroleum from its territory by ensuring compliance with zoning, environmental and other regulatory regimes. It is clearly a commercial activity, however, for these nations to sit together and collude to limit their oil production for the sole purpose of increasing prices.

The 9th Circuit affirmed the District Court's ruling in *Int. Assoc. of Machinists* in 1981 (649 F.2d 1354), but on the basis of an entirely different legal principle. The 9th Circuit held that the Court could not hear this case because of the ''act of state'' doctrine, which holds that a U.S. court will not adjudicate a politically sensitive dispute which would require the court to judge the legality of the sovereign act of a foreign state.

The 9th Circuit itself acknowledged in its *Int. Assoc. of Machinists* opinion that ''The [act of state] doctrine does not suggest a rigid rule of application,'' but rather application of the rule will depend on the circumstances of each case. The Court also noted that, ''A further consideration is the availability of internationally-accepted legal principles which would render the issues appropriate for judicial disposition.'' The Court then quotes from the Supreme Court's opinion in *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964):

It should be apparent that the greater the degree of codification or consensus concerning a particular area of international law, the more appropriate it is for the judiciary to render decisions regarding it, since the courts can then focus on the application of an agreed principle to circumstances of fact rather than on the sensitive task of establishing a principle not inconsistent with the national interest or with international justice.

Since the 9th Circuit issued its opinion in 1981, there have been major developments in international law that impact directly on the subject matter at issue. As we discuss in greater detail below, the 1990s have witnessed a significant increase in efforts to seek compliance with basic international norms of behavior through international courts and tribunals. In addition, there is strong evidence of an emerging consensus in international law that price fixing by cartels violates such international norms. Accordingly, a court choosing to apply the act of state doctrine to a dispute with OPEC today may very well reach a different conclusion than the 9th Circuit reached almost 20 years ago.

(2) A suit in the International Court of Justice at the Hague based upon ''the general principles of law recognized by civilized nations.''

In addition to such domestic antitrust actions, we believe you should give serious consideration to bringing a case against OPEC before the International Court of Justice (the ''ICJ'') at the Hague. You should consider both a direct suit against the conspiring nations as well as a request for an advisory opinion from the Court through the auspices of the UN Security Council. The actions of OPEC in restraint of trade violate ''the general principles of law recognized by civilized nations.'' Under Article 38 of the Statute of the ICJ, the Court is required to apply these ''general principles'' when deciding cases before it.

This would clearly be a cutting-edge lawsuit, making new law at the international level. But there have been exciting developments in recent years which suggest that the ICJ would be willing to move in this direction. In a number of contexts, we have seen a greater respect for and adherence to fundamental international principles and norms by the world community. For example, we have seen the establishment of the International Criminal Court in 1998, the International Criminal Tribunal for Rwanda in 1994, and the International Criminal Tribunal for the former Yugoslavia in 1993. Each

of these bodies has been active, handing down numerous indictments and convictions against individuals who have violated fundamental principles of human rights.

Today, adherence to international principles has spread from the tribunals in the Hague to individual nations around the world. The exiled former dictator of Chad, Hissene Habre, was indicted in Senegal on charges of torture and barbarity stemming from his reign, where he allegedly killed and tortured thousands. This case is similar to the case brought against former Chilean dictator Augusto Pinochet by Spain on the basis of his alleged atrocities in Chile. At the request of the Spanish government, Pinochet was detained in London for months until an English court determined that he was too ill to stand trial.

While these emerging norms of international behavior have tended to focus more on human rights than on economic principles, there is one economic issue on which an international consensus has emerged in recent years—the illegitimacy of price fixing by cartels. For example, on April 27, 1998, the Organization for Economic Cooperation and Development issued an official ''Recommendation'' that all twenty-nine member nations ''ensure that their competition laws effectively halt and deter hard core cartels.'' The recommendation defines ''hard core cartels'' as those which, among other things, fix prices or establish output restriction quotas. The Recommendation further instructs member countries ''to cooperate with each other in enforcing their laws against such cartels.''

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The behavior of OPEC and other oil-producing nations in restraint of trade violates U.S. antitrust law and basic international norms, and it is injuring the United States and its citizens in a very real way. We hope you will seriously consider judicial action to put an end to such behavior.

We hope that you will seriously consider judicial action to put an end to such behavior.

ARLEN SPECTER.
CHARLES SCHUMER.
HERB KOHL.
STROM THURMOND.
MIKE DEWINE.

Mr. SPECTER. Mr. President, today I am going to be putting into the RECORD at conclusion of my statement—again I ask unanimous consent—a proposed modification of the U.S. antitrust laws.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit No. 2.)

EXHIBIT 2

S. __

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Petroleum Industry Antitrust Act of 2006''.

SEC. 2. PROHIBITION ON UNILATERAL WITHHOLDING.

The Clayton Act (15 U.S.C. 12 et seq.) is amended—

(1) by redesignating section 28 as section 29; and

(2) by inserting after section 27 the following:

''SEC. 28. OIL AND NATURAL GAS.

''(a) IN GENERAL.—Except as provided in subsection (b), it shall be unlawful for any person to refuse to sell, or to export or divert, existing supplies of crude oil, refined products derived from crude oil, or natural gas with the primary intention of increasing prices or creating a shortage in the market where the existing supplies are located or intended to be shipped.

''(b) CONSIDERATIONS.—In determining whether a person who has refused to sell exported or diverted existing supplies of crude oil, refined products derived from crude oil, or natural gas has done so with the intent of increasing prices or creating a shortage in the market under subsection (a), the court shall consider whether—

''(1) the cost of acquiring, producing, refining, processing, marketing, selling, or otherwise making such products available has increased; and

''(2) the price obtained from exporting or diverting existing supplies is greater that the price obtained where the existing supplies are located or are intended to be shipped.''.

SEC. 3. PROHIBITION ON CERTAIN MERGERS IN THE OIL AND GAS INDUSTRY.

Section 7 of the Clayton Act (15 U.S.C. 18) is amended by adding at the end the following:

''Notwithstanding any other provision of this section, no person engaged in, or assets of a person engaged in, commerce in the business of exploring for, producing, refining, or otherwise processing, storing, marketing, selling, or otherwise making available petroleum, products derived from petroleum, or natural gas in any section of the United States may be acquired by another person, if the effect of such acquisition may be to appreciably diminish competition.''.

SEC. 4. STUDY BY THE GOVERNMENT ACCOUNTABILITY OFFICE.

(a) DEFINITION.—In this section, the term ''covered consent decree'' means a consent decree—

(1) to which either the Federal Trade Commission or the Department of Justice is a party;

(2) that was entered by the district court not earlier than 10 years before the date of enactment of this Act;

(3) that required divestitures; and

(4) that involved a person engaged in the business of exploring for, producing, refining, or otherwise processing, storing, marketing, selling, or otherwise making available petroleum, products derived from petroleum, or natural gas.

(b) REQUIREMENT FOR A STUDY.—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study evaluating the effectiveness of divestitures required under covered consent decrees.

(c) REQUIREMENT FOR A REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit a report to Congress, the Federal Trade Commission, and the Department of Justice regarding the findings of the study conducted under subsection (b).

(d) FEDERAL AGENCY CONSIDERATION.—Upon receipt of the report required by subsection (c), the Attorney General or the Chairman of the Federal Trade Commission, as appropriate, shall consider whether any additional action is required to restore competition or prevent a substantial lessening of competition occurring as a result of any transaction that was the subject of the study conducted under subsection (b).

SEC. 5. JOINT FEDERAL AND STATE TASK FORCE.

The Attorney General and the Chairman of the Federal Trade Commission shall establish a joint Federal-State task force, which shall include the attorney general of any State that chooses to participate, to investigate the information sharing practices among persons in the business of exploring for, producing, refining, or otherwise processing, storing, marketing, selling, or otherwise making available petroleum, products derived from petroleum, or natural gas, particularly any company about which the Energy Information Administration collects financial and operating data as part of its Financial Reporting System.

SEC. 6. NO OIL PRODUCING AND EXPORTING CARTELS.

(a) SHORT TITLE.—This section may be cited as the ''No Oil Producing and Exporting Cartels Act of 2006'' or ''NOPEC''.

(b) SHERMAN ACT.—The Sherman Act (15 U.S.C. 1 et seq.) is amended—

(1) by redesignating section 8 as section 9; and

(2) by inserting after section 7 the following:

''SEC. 8. OIL PRODUCING CARTELS.

''(a) IN GENERAL.—It shall be illegal and a violation of this Act for any foreign state, or any instrumentality or agent of any foreign state, in the circumstances described in subsection (b), to act collectively or in combination with any other foreign state, any instrumentality or agent of any other foreign state, or any other person, whether by cartel or any other association or form of cooperation or joint action—

''(1) to limit the production or distribution of oil, natural gas, or any other petroleum product;

''(2) to set or maintain the price of oil, natural gas, or any petroleum product; or

''(3) to otherwise take any action in restraint of trade for oil, natural gas, or any petroleum product.

''(b) CIRCUMSTANCES.—The circumstances described in this subsection are an instance when an action, combination, or collective action described in subsection (a) has a direct, substantial, and reasonably foreseeable effect on the market, supply, price, or distribution of oil, natural gas, or other petroleum product in the United States.

''(c) SOVEREIGN IMMUNITY.—A foreign state engaged in conduct in violation of subsection (a) shall not be immune under the doctrine of sovereign immunity from the jurisdiction or judgments of the courts of the United States in any action brought to enforce this section.

''(d) INAPPLICABILITY OF ACT OF STATE DOCTRINE.—No court of the United States shall decline, based on the act of state doctrine, to make a determination on the merits in an action brought under this section.

''(e) ENFORCEMENT.—The Attorney General of the United States may bring an action to enforce this section in any district court of the United States as provided under the antitrust laws, as defined in section 1(a) of the Clayton Act (15 U.S.C. 12(a)).''.

(c) SOVEREIGN IMMUNITY.—Section 1605(a) of title 28, United States Code, is amended—

(1) in paragraph (6), by striking ''or'' at the end;

(2) in paragraph (7), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(8) in which the action is brought under section 8 of the Sherman Act.''.

Mr. SPECTER. Mr. President, I am not introducing the bill today, but I am putting it forward so that my colleagues may consider it and it may be considered by the witnesses who are

going to be testifying before the Judiciary Committee on March 14. I am putting it in the public view to solicit comments and to solicit responses and ideas as to the effectiveness or propriety or desirability of such legislation. I do so tentatively because it is a very complicated subject, and there have been relatively few modifications of the antitrust laws in the United States.

The basic antitrust law under which we operate is more than a century old. The Sherman Act, enacted in 1890, made it unlawful to enter into a contract, combination, or conspiracy in restraint of trade and prohibited monopolization. Then, 24 years later, we enacted the Clayton Act, which prohibits unlawful tying, corporate mergers and acquisitions that reduce competition and interlocking directorates, which lead principally to substantial restraint on trade. Those are the two principal statutes that mold the antitrust laws in the United States.

There have been some additions: in 1914, the Federal Trade Commission Act prohibiting unfair methods of competition affecting commerce; in 1936, the Robinson-Patman Act prohibiting sales that discriminate in the price or sale of goods to equally situated distributors where the effect of such sales is to reduce competition; in 1945, the McCarron-Ferguson Act applying antitrust laws to the insurance industry only ''to the extent that such business is not regulated by State law;'' and then the 1976 Hart-Scott-Rodino Act which amended the Clayton Act and required companies to give notice to the antitrust enforcement agencies prior to consummating a merger.

But in this long history, the principal acts have been the Clayton Act and the Sherman Act.

There has been from time to time other legislation touching the antitrust issues—the Soft Drink Interbrand Competition Act in 1980 permitting the owners of trademark soft drinks to grant exclusive territorial franchises to bottlers or distributors; the local government antitrust laws of 1984; the International Antitrust Enforcement Assistance Act of 1994; the Standards Development Organization Advancement Act of 2004 protecting organizations that develop industry standards from certain types of antitrust liability; and in 2004 the Antitrust Criminal Penalty Enhancement Reform Act.

There have been some modifications of the antitrust laws allowing the National Football League, for example, to have revenue sharing. From time to time, proposals have been made to limit the exemption that baseball enjoys from the antitrust laws as a result of decisions of the Supreme Court of the United States.

It is my concern that there ought to be some close analysis of the existing antitrust laws with what is happening in the marketplace. The outline of proposed legislation which I have denominated the ''Petroleum Industry Antitrust Act of 2006'' is an outline for analysis and for further thought. Again I will say that I am not introducing it as a bill today, but I will use it as a basis for discussion and questioning in the Judiciary Committee hearing that will be held on March 14.

This bill would eliminate the judge-made doctrines that prevent OPEC members from being sued for violation of the antitrust laws by conspiring to fix the price of crude oil. Section 1 of the bill amends the Sherman Act prohibiting oil and gas companies from diverting, exporting, or refusing to sell existing supplies of crude oil, refined products, or natural gas, with the primary intent of raising prices or creating a shortage in the market where the existing supplies are located or intended to be shipped.

Section 2 amends the Clayton act prohibiting the acquisition of an oil or gas company or, any assets of such a company, when the acquisition would lessen competition. Current law allows the antitrust agencies to challenge any acquisition that may ''substantially'' lessen competition. This change would significantly increase the level of scrutiny received by any large merger between competitors in the oil and gas industry.

Section 3 requires the Government Accountability Office to evaluate whether divestitures required by the Federal Trade Commission (''FTC'') or the Department of Department (''DOJ'') with regard to oil and gas industry mergers have been effective in restoring competition. Once the study is completed, the FTC and the DOJ must consider whether any additional steps are necessary to restore competition, including further divestiture or the unraveling of some mergers.

Section 4 requires that the FTC and the DOJ establish a joint federal-state task force to examine information sharing and other anticompetitive results of recent consolidation in the oil and gas industry.

These provisions might well be extended in a final legislative proposal to go beyond oil and gas, but that is the thrust of what we are considering as we prepare for the Judiciary Committee hearing on March 14.

Again, I wish to emphasize that this is an outline of proposed modifications to the antitrust laws. I approach it with an eye toward the spirit of the Sherman Act and the Clayton Act, both of which have existed for so long, but also with a sense that what is happening in the marketplace today requires some further analysis by the Judiciary Committee.

We are finding that the prices of heating oil are extremely high, the price of natural gas is extremely high, the price of gasoline at the pump is extremely high, and the American consumers and consumers beyond America deserve some attention, they deserve to have this situation analyzed and considered.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ETHICS REFORM

Mr. THOMAS. Mr. President, I will express some anxiety about the fact we are not moving forward with legislation we need to be considering. Interestingly enough, I came from a briefing upstairs by the Secretary of Defense and the general from Central Command. It reminds Members of the things out there that we need to deal with.

Members go home to their States and people talk about issues that are of interest to them—whether it is the economy, energy, budgets—and yet we find ourselves going day after day without being able to move forward to the topics that are of prime importance. Certainly, we should have the opportunity to talk about whatever people want to talk about. We should have the opportunity to discuss and debate issues, to come to conclusions on issues, but we need to come to a conclusion.

It is embarrassing to see what has happened today. We had an opportunity to move toward to resolve one of the issues we had before the Senate, the lobbying issue, which needs to be resolved. I don't happen to think it is the biggest issue in the world, but we were in the process of finding ways to get to it in a bipartisan effort that collapsed because of one effort to derail what we are doing.

I think we need to take a long look at ourselves. It would be good if we had a little time to lay out on a list those issues that are most important, the top-quality issues, and then really focus on those issues.

I think to bring up something here that is totally unrelated to the lobbying reform issue, which simply caused us to be stalled on an issue that is being resolved—whether it is the 45-day period, whether it is the agreement that has come forth since—there was no real reason to bring this up on the floor at this time except to obstruct moving forward.

I guess I am becoming sort of upset with the fact that we are not able to move forward. I think some of these things are pretty partisan issues, simply wanting to get this group out because there is something going on in the House to resolve that hard issue, and they do not want to be left behind. It is political. I am sorry, but that really is not what it is about to be on the Senate floor.

So I will not take any more time, except, I guess, to express my frustration when we do have important issues to deal with. There are a lot of issues out there that are so important. We are